

Contract ID: 2240

Provisions for purchase of rPOS gear.

IBM

Amendment 2 to 2007 TLMA.



## ContractFile

Circuit City Stores, Inc.  
Robin Pasini  
Procurement - DR3,2  
9954 Mayland Drive  
Robin\_Pasini@circuitcity.com

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**Vendor****Title**

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IBM

Amendment 2 to 2007 TLMA.

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**Please Copy:**

Robin Pasini

Justin Schauer

Wayne Luck

Pat O'Reilly

Bill McCorey

Phil Dunn

Lisa Baldyga

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**Vendor Contact:**

Lawson Heggie  
Client Executive

(W) 804-527-4000 x6820

(C) 804-852-3485

heggie@us.ibm.com

**Contract Information:**

Contract Type: Amendment

Contract Start Date: 11/9/2007

Contract End Date: 7/31/2008

Contract Value: \$0.00

Description: Provisions for purchase of rPOS gear.

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## AMENDMENT NO. 2 TO TERM LEASE MASTER AGREEMENT

Agreement No. TLMA/PSF032007

This Amendment No. 2 dated November 9, 2007 ("Amendment") to the Term Lease Master Agreement No. TLMA/PSF032007 between IBM Credit LLC and Circuit City Stores, Inc. ("Agreement") hereby amends the Agreement as set forth below. Any capitalized terms not defined in this Amendment shall have the meanings assigned to them in the Agreement.

The undersigned parties hereby agree that, for good and valuable consideration, the sufficiency of which is hereby acknowledged by the parties, the Agreement is hereby modified as follows:

~Paragraph – Definitions:

– following the definition for "Credit Limit" insert the following definition:

"Date of Installation" means the date the Equipment is installed and operational at the Installed Location listed on the applicable Supplement."; and

– following the definition for "IBM Services" insert the following definition:

"Installation Location" means the Circuit City location where the Equipment will be Installed.

"Installed" means the Equipment is installed and operational at the applicable Installation Location."

~ Paragraph 11 - Delivery and Installation:

– The first sentence shall be deleted and replaced by the following sentences:

"Lessee shall arrange with Lessee's Supplier for the delivery of the Equipment for installation of Equipment at the Installation Locations; provided that until December 26, 2008 Lessee may warehouse Equipment at a warehouse controlled by Lessee or Lessee's bailee located at Jacobson Distribution Company, 1650 21<sup>st</sup> Street SW, LeMars, IA 51031 ("Lessee's Warehouse"). Lessor shall not be responsible for delivery of the Equipment from such warehouse to Installation Location. Lessee shall provide to Lessor notice in writing, in accordance with Paragraph 41 hereof: (i) within fourteen (14) days of each shipment of Equipment leaving the warehouse, the serial numbers and Installation Location destination (and name of assignee pursuant to Paragraph 32 below if applicable) for each such item(s) of Equipment; and (ii) within fourteen (14) days of such Equipment being Installed, the Date of Installation for each such item of Equipment (collectively, "Installation Notices"); and

– at the end insert the following:

"Lessee agrees that, notwithstanding the Rent Commencement Date, the Date of Installation for all Equipment shall be no later than July 31, 2008 for at least 285 Installation Locations ("July Completion Date") and the Date of Installation to complete the remaining Installation Locations shall be no later than December 26, 2008 ("December Completion Date"). "

~Paragraph 12 – Conditions Precedent – following subparagraph (e) delete "and" and at the end of subparagraph (f) insert the following prior to the period:

"; and (g) in the Term Lease Master Agreement No. TLMA/PSF092005 between the parties hereof, as amended, the Total Financing is equal to the Credit Limit as such terms are defined therein."

~ Paragraph 13 – Rent Commencement Date – replace Paragraph 13 in its entirety with the following:

"13. RENT COMMENCEMENT DATE. The Rent Commencement Date shall be the date shown on the Certificate of Acceptance as determined by Lessee, upon or after receipt of the Equipment in

good and serviceable condition at Lessee's Warehouse, which shall in no event be later than ten (10) days after Lessee's carrier accepts receipt of the Equipment at Lessee's Supplier's location."

~ Paragraph 19 – Optional Extension – in the second sentence's parenthetical after "Options" insert "B+".

~ Paragraph 26 – Casualty Insurance; Loss or Damage:

-in the second sentence replace "Date of Installation as defined in the Purchase Agreement" with "Rent Commencement Date"; and

- in the third sentence replace "Date of Installation" with "Rent Commencement Date";

~ Paragraph 32 – Sublease of Equipment; Assignment by Lessee – replace subparagraph (G) in its entirety with the following:

"(G) for any assignment contemplated by this paragraph occurring after the Rent Commencement Date of the related Supplement, Lessee shall indicate on the Installation Notices, the location of all the Equipment by serial number and the date which such Equipment was Installed. Lessee shall deliver a Reconciliation Certificate in the form of Attachment 1 hereto, at the end of each calendar quarter certifying the location and serial number of each item of Equipment."

~ Paragraph 37 – Default; no Waiver: – following subparagraph (f) delete "or" and at the end of subparagraph (f) insert the following prior to the period:

"; (g) Lessee fails to have the Equipment Installed in the requisite number of Installation Locations in accordance with Paragraph 11 hereof, on or before the July Completion Date and the December Completion Date (each a "Completion Date") and Lessee fails to pay to Lessor, within fifteen (15) days of Lessee's receipt of a notice from Lessor in the form of Attachment 2 hereto, stating that Lessee has breached this TLMA or related Supplement ("Notice of Breach"), an amount equal to the present value of remaining Rent due, discounted at the Present Value Rate as defined below, for any and all items of Equipment at Installation Locations that were not Installed, but were required to be Installed, by each Completion Date

; or (h) Lessee fails to provide the Installation Notices in accordance with Paragraph 11 hereof, and fails to either deliver complete and accurate Installation Notices for the subject Equipment within seven (7) days of Lessee's receipt of a Notice of Breach, or pay to Lessor, within fifteen (15) days of Lessee's receipt of such Notice of Breach, an amount equal to the present value of remaining Rent due, discounted at the Present Value Rate as determined below, for any and all items of Equipment that were subject to Installation Notices that were required to be delivered in accordance with such Paragraph; provided that unless an Event of Default has occurred and is continuing, no such Notice of Breach shall be sent by Lessor until thirty (30) days after the dates the Installation Notices were required to be delivered to Lessor in accordance with Paragraph 11 hereof.

For the purposes of this Paragraph, the Present Value Rate is defined as the average of the two (2) year LIBOR Swap Rates and the three (3) year LIBOR Swap Rates as defined in Exhibit B of Term Lease Master Agreement No. TLMA/PSF032007 on the date of a Notice of Breach and not to exceed 5.25% per annum."

~Exhibit A, attached hereto, hereby supersedes and replaces any prior Exhibit A.

~Exhibit B, attached hereto, hereby supersedes and replaces any prior Exhibit B.

All other terms and conditions of the Agreement remain in full force and effect. This Amendment shall become effective upon receipt and acceptance by IBM Credit LLC below.

Accepted by:  
IBM Credit LLC

Circuit City Stores, Inc.

For or as Lessor:

by Brad P Graham  
Authorized Signature

Brad P Graham 11/12/07  
Name (Type or Print) Date

by P. S. Dunn  
Authorized Signature

P. S. Dunn  
Name (Type or Print) Date

Exhibit A

LEASE FINANCING - AVERAGE STORE DETAIL									
Supplier	Part No.	Short Part No.	Description	Per Site Needs	2005/2006 Cost	Unit Cost c. 12/10/06	(Memo Only) Unit Cost c. Sep 24, 2007	Unit Cost c. Nov 02, 2007	Extended Amount Financed
IBM- Agilysys	6636-AC1 15" LCD DISPLAY	6636-AC1	6636-AC1 15" LCD FLAT PANEL DISPLAY	7.0	Unknown	\$230.00	\$230.00	\$230.00	\$1,610
IBM- Agilysys	4610-TG4 SERIAL NUMBER REF	4610-TG4	4610-TG4 SERIAL NUMBER REF (warehouse printer)	1.0	Unknown	\$635.00	\$573.00	\$552.10	\$552
IBM- Agilysys	4810-32H LOCK, W/O DISPLAY REG	4810-32H	4810-32H LOCK, W/O DISPLAY REG	3.0	Unknown	\$1,100.00	\$990.15	\$949.36	\$2,848
IBM- Agilysys	4810-32H PLUG, W/O DISPLAY REG	4810-32H	4810-32H PLUG, W/O DISPLAY REG	10.4	Unknown	\$1,100.00	\$990.15	\$949.36	\$9,873
IBM- Agilysys	4810-32H, PLUG WITH DISPLAY	4810-32H	4810-32H, PLUG WITH DISPLAY	0.4	Unknown	\$1,266.00	\$1,138.75	\$1,091.45	\$437
IBM- Agilysys	4810-32H, LOCK WITH DISPLAY	4810-32H	4810-32H, LOCK WITH DISPLAY	0.2	Unknown	\$1,266.00	\$1,138.75	\$1,091.45	\$218
IBM- Agilysys	9165 AB6 LENOVO 15" FLAT PANEL	9165 AB6	Lenovo 15" Flat Panel Display	7.0	Unknown	\$175.00	\$175.00	\$175.00	\$1,225
IBM- Agilysys	4610-TG4 SERIAL NUMBER REF	4610-TG4	4610-TG4 SERIAL NUMBER REF (POS printer)	14.0	Unknown	\$635.00	\$573.00	\$552.10	\$7,729
<b>IBM - TOTAL = CATEGORY 1.1</b>						<b>\$6,407</b>	<b>\$5,809</b>	<b>\$5,591</b>	<b>\$24,493</b>
Symbol- IBM ITS	LS2208-SR20007R	LS2208-S	Symbol LS2208 bar code scanner	16	\$120.90	\$134.34	\$134.34	\$134.34	\$2,149
Symbol- IBM ITS	25-57917-20	25-57917	Symbol 15 Pin Cable for LS2208 scanner	14	\$43.62	\$48.47	\$48.47	\$48.47	\$679
Symbol- IBM ITS	CBA-K01-S07PA	CBA-K01-S07PA	PS-2 POWER PORT 7FT, STRAIGHT	2	\$15.30	\$14.81	\$14.81	\$14.81	\$30
Symbol- IBM ITS	50-14000-008R	50-14000-008R	POWER SUPPLY	2	\$26.65	\$25.80	\$25.80	\$25.80	\$52
Symbol- IBM ITS	PD8500-CADDDPUC220	PD8500-C	Symbol PD8500 (Color) agcap w/ key injection	16	\$444.59	\$537.77	\$537.77	\$537.77	\$8,604
Symbol- IBM ITS	23844-00-00R	23844-00	US AC Line Cord	16	\$8.18	\$9.09	\$9.09	\$9.09	\$145
Symbol- IBM ITS	50-24000-006	50-24000	Power supply for PD8500	16	\$39.51	\$43.90	\$43.90	\$43.90	\$702
Symbol- IBM ITS	PF14007-12	PF14007	DB-9 cable for PD8500 ( assumes RS-232 connection)	16	\$9.82	\$10.92	\$10.92	\$10.92	\$175
<b>SYMBOL - TOTAL = CATEGORY 2.1</b>						<b>\$825</b>	<b>\$825</b>	<b>\$825</b>	<b>\$12,536</b>
<b>STORE TOTAL</b>						<b>\$7,232</b>	<b>\$6,634</b>	<b>\$6,416</b>	<b>\$37,029</b>
LEASE FINANCING - AVERAGE STORE SUMMARY									
IBM- Agilysys		4610-TG4		15					\$8,282
IBM- Agilysys		4810-32H		14					\$13,376
IBM- Agilysys		9165 AB6		7					\$1,225
IBM- Agilysys		6636-AC1		7					\$1,610
<b>IBM - TOTAL</b>									<b>\$24,493</b>
<b>Symbol- IBM ITS (see above)</b>									<b>\$12,536</b>
<b>STORE TOTAL</b>									<b>\$37,029</b>
LEASE FINANCING - AVERAGE "GO" STORE DETAIL									
Supplier	Part No.	Short Part No.	Description	Per Site Needs	2005/2006 Cost	Unit Cost c. 12/10/06	(Memo Only) Unit Cost c. Sep 24, 2007	Unit Cost c. Nov 02, 2007	Extended Amount Financed
IBM- Agilysys	6636-AC1 15" LCD DISPLAY	6636-AC1	6636-AC1 15" LCD FLAT PANEL DISPLAY	7.0	Unknown	\$230.00	\$230.00	\$230.00	\$1,610
IBM- Agilysys	4610-TG4 SERIAL NUMBER REF	4610-TG4	4610-TG4 SERIAL NUMBER REF (warehouse printer)	1.0	Unknown	\$635.00	\$573.00	\$552.10	\$552
IBM- Agilysys	4810-32H LOCK, W/O DISPLAY REG	4810-32H	4810-32H LOCK, W/O DISPLAY REG	3.0	Unknown	\$1,100.00	\$990.15	\$949.36	\$2,848
IBM- Agilysys	4810-32H PLUG, W/O DISPLAY REG	4810-32H	4810-32H PLUG, W/O DISPLAY REG	10.4	Unknown	\$1,100.00	\$990.15	\$949.36	\$9,873
IBM- Agilysys	4810-32H, PLUG WITH DISPLAY	4810-32H	4810-32H, PLUG WITH DISPLAY	0.4	Unknown	\$1,266.00	\$1,138.75	\$1,091.45	\$437
IBM- Agilysys	4810-32H, LOCK WITH DISPLAY	4810-32H	4810-32H, LOCK WITH DISPLAY	0.2	Unknown	\$1,266.00	\$1,138.75	\$1,091.45	\$218
IBM- Agilysys	9165 AB6 LENOVO 15" FLAT PANEL	9165 AB6	Lenovo 15" Flat Panel Display	7.0	Unknown	\$175.00	\$175.00	\$175.00	\$1,225
IBM- Agilysys	4610-TG4 SERIAL NUMBER REF	4610-TG4	4610-TG4 SERIAL NUMBER REF (POS printer)	14.0	Unknown	\$635.00	\$573.00	\$552.10	\$7,729
<b>IBM - TOTAL = CATEGORY 1.1</b>						<b>\$6,407</b>	<b>\$5,809</b>	<b>\$5,591</b>	<b>\$24,493</b>
Symbol- IBM ITS	LS2208-SR20007R	LS2208-S	Symbol LS2208 bar code scanner	18.5	\$120.90	\$114.07	\$114.07	\$114.07	\$2,110
Symbol- IBM ITS	25-57917-20	25-57917	Symbol 15 Pin Cable for LS2208 scanner	16.5	\$43.62	\$62.51	\$62.51	\$62.51	\$1,031
Symbol- IBM ITS	CBA-K01-S07PA		PS-2 POWER PORT 7FT, STRAIGHT	2.0	\$15.30	\$12.00	\$12.00	\$12.00	\$24
Symbol- IBM ITS	50-14000-008R		POWER SUPPLY	2.0	\$26.65	\$21.00	\$21.00	\$21.00	\$42
Symbol- IBM ITS	PD8500-CADDDPUC220	PD8500-C	Symbol PD8500 (Color) agcap w/ key injection	18.5	\$444.59	\$444.42	\$444.42	\$444.42	\$8,222
Symbol- IBM ITS	23844-00-00R	23844-00	US AC Line Cord	18.5	\$8.18	\$6.30	\$6.30	\$6.30	\$117
Symbol- IBM ITS	50-24000-006	50-24000	Power supply for PD8500	18.5	\$39.51	\$41.61	\$41.61	\$41.61	\$770
Symbol- IBM ITS	PF14007-12	PF14007	DB-9 cable for PD8500 ( assumes RS-232 connection)	18.5	\$9.82	\$10.47	\$10.47	\$10.47	\$194
<b>SYMBOL - TOTAL = CATEGORY 3.1</b>						<b>\$712</b>	<b>\$712</b>	<b>\$712</b>	<b>\$12,510</b>
<b>STORE TOTAL</b>						<b>\$7,119</b>	<b>\$6,521</b>	<b>\$6,303</b>	<b>\$37,002</b>
LEASE FINANCING - AVERAGE "GO" STORE SUMMARY									
IBM- Agilysys		4610-TG4		15					\$8,282
IBM- Agilysys		4810-32H		14					\$13,376
IBM- Agilysys		9165 AB6		7					\$1,225
IBM- Agilysys		6636-AC1		7					\$1,610
<b>IBM - TOTAL</b>									<b>\$24,493</b>
<b>Symbol- IBM ITS (see above)</b>									<b>\$12,510</b>
<b>STORE TOTAL</b>									<b>\$37,002</b>

## Exhibit B

Upon the receipt of an invoice(s), Lessor will provide Lessee with a Certificate of Acceptance matching the invoice(s) and a Supplement which will contain a rate, a Term and a lease/finance option that is determined by the Category assigned to such Product in Exhibit A. For each Product, the Supplement shall specify, as applicable, a Category 1.1 Rate, Category 2.1 Rate and a Category 3.1 Rate ("Category Rates").

These Category Rates shall be for the "Category Terms" as follows: the Category 1.1 Term is 60 months, the Category 2.1 and Category 3.1 Term is 36 months

The Lease/Financing options will be listed on the Supplement as follows: the Category 1.1 Type is a Lease with an end of Lease purchase option that is determined by the Lessor based on the Equipment's Fair Market Value ("FMV Lease"); the Category 2.1 and Category 3.1 Type is FMV Lease.

The "Category 1.1 Rate" shall be the rate per annum based on the LIBOR Swap (as hereinafter defined) minus 194 basis points, the "Category 2.1 Rate" shall be the rate per annum based on the LIBOR Swap minus 367 basis points, and the "Category 3.1 Rate" shall be the rate per annum based on the LIBOR Swap minus 367 basis points. The Category Rates for Category 1.1 shall be based on the weekly average of the three (3) year London Inter Bank Offer Rate ("LIBOR") Swap Rates published by the Federal Reserve Board for the weekly period ending on the Friday immediately preceding the issuance date of each Supplement ("Three Year LIBOR Swap"). The Three Year LIBOR Swap is published in Statistical Release H.15 and can be found at: <http://www.federalreserve.gov/Releases/H15/data.htm> in the Interest Rate Swaps' section thereof.

The Category Rates for Category 2.1 and Category 3.1 shall be based on the weekly average of the two (2) year LIBOR Swap Rates published by the Federal Reserve Board for the weekly period ending on the Friday immediately preceding the issuance date of each Lease Rate Supplement ("Two Year LIBOR Swap"). The Two Year LIBOR Swap is published in Statistical Release H.15 and can be found at: <http://www.federalreserve.gov/Releases/H15/data.htm> in the Interest Rate Swaps' section thereof.

For each item of Equipment leased or financed, the first monthly payment, due in advance, which shall in no event be later than December 26, 2007, shall include an amount equal to 50% of the Amount Financed (each, a Prepayment Amount" and the total of all Prepayment Amounts, the "Total Prepayment Amount") in addition to the monthly Rent payment, the Rent Rate for which shall be determined in accordance with the paragraph below. Notwithstanding anything in this Agreement to the contrary, Lessee shall pay Lessor a minimum of Ten Million Dollars (\$10,000,000.00) on or before December 20, 2007 to be applied towards the Total Prepayment Amount.

The following calculation will be used to determine the actual monthly Rent Rate payable each and every month in advance ("Rent Rate") per thousand dollars (\$1,000) for an item of Equipment or Financing as it appears on the Supplement ("Rate Calculation"). For the purposes of Rate Calculation the following will apply:

## Example of Rate Calculation

### DEFINITION OF TERMS

\$1,000	=	Amount Financed	SWAP	=	LIBOR Swap Rate
R/K	=	Rent Rate per \$1,000	SPREAD	=	Spread to LIBOR Swap Rate
N	=	Term of Lease or Loan			

### GENERAL FORMULA

$$R/K = \frac{\$1,000}{\left[ \frac{1 + (SWAP + SPREAD)/12}{(SWAP + SPREAD)/12} \right] \left[ 1 - \left( \frac{1}{1 + (SWAP + SPREAD)/12} \right)^N \right]} \times 0.50$$

### EXAMPLE ASSUMPTIONS & RESULTS

\$1,000	=	Amount Financed	SWAP	=	4.25%
R/K	=	\$9.40	SPREAD	=	0.75%
N	=	60 Months			

$$\$9.40 = \frac{\$1,000}{\left[ \frac{1 + (0.0425 + 0.0075)/12}{(0.0425 + 0.0075)/12} \right] \left[ 1 - \left( \frac{1}{1 + (0.0425 + 0.0075)/12} \right)^{60} \right]} \times 0.50$$

Attachment 1

**Reconciliation Certificate**

Circuit City Stores, Inc. hereby represents and warrants that to the best of its knowledge after review and investigation the attached list of Installed Equipment and the related Installation Locations is accurate in all material respects.

Circuit City Stores, Inc.

by \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name (Type or Print) Date

Attachment



**ATTACHMENT 2**

**Notice of Breach**

Circuit City Stores, Inc.  
Attn:  
9950 Mayland Drive  
Richmond, Virginia 23233

Sent via registered mail

Dear \_\_\_\_\_,

IBM Credit LLC ("IBM Credit") hereby notifies you that, because of failure to provide Installation Notices and/or failure to have the Equipment installed in the requisite number of Installation Locations in accordance with Paragraph 11 of the Term Lease Master Agreement between IBM Credit and Circuit City Stores, Inc ("Circuit City") dated as of April \_\_, 2007 ("2007 TLMA"), Circuit City has breached the 2007 TLMA.

Since the breach has not been rectified and is continuing, IBM Credit, in exercise of its rights, declares an amount of \$ \_\_\_\_\_ to be immediately due and payable by Circuit City within 15 days of receipt of this notice.

The amount owed has been calculated as follows:

Serial number(s) in default:

Date on installation:

Due Date of Installation notice:

Financial calculation:

Unless the amount of \$ \_\_\_\_\_ is paid within 15 days of receipt of this notice or IBM Credit receives complete and accurate Installation Notices for the above described Equipment within 7 days of receipt of this notice, Circuit City shall be in default of the 2007 TLMA and IBM Credit will pursue any legal remedies which it has, including but not limited to, repossession of the Equipment without interference.

Repossession does not waive the amount due as shown above.

If you have any questions regarding this notice, please contact me at (\_\_\_\_) \_\_\_\_-\_\_\_\_.

IBM Credit LLC

by \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name (Type or Print) Date

\_\_\_\_\_  
Title